

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIE L. MITCHELL,

Plaintiff,

v.

OAK HARBOR FREIGHT LINES, INC.,

Defendant.

No. C 07-4388 CW

ORDER GRANTING IN  
PART DEFENDANT'S  
MOTION FOR JUDGMENT  
ON THE PLEADINGS

Defendant Oak Harbor Freight Lines, Inc, has filed a motion for judgment on the pleadings. In an order dated April 22, 2008, the Court took the motion under submission on the papers and informed pro se Plaintiff Willie Mitchell that his opposition was due by May 8, 2008. The Court informed Plaintiff that failure "to timely file an opposition to the motion may result in the granting of the motion." Plaintiff did not file an opposition by May 8. On May 15, 2008, the Court entered an order extending the deadline for Plaintiff's opposition to May 22, 2008. In that order, the Court warned, "Failure by Plaintiff to timely file an opposition to the motion may result in dismissal of this action for failure to prosecute." Plaintiff did not file an opposition by May 22. Having considered Defendant's papers, the Court grants Defendant's motion in part.

BACKGROUND

The following facts are alleged in the complaint and are assumed true for purposes of this order. Plaintiff has been a

1 professional truck driver since 1969. In March, 2000, Plaintiff  
2 was hired by Defendant. On October 8, 2004, Plaintiff was required  
3 to undergo a random Department of Transportation (DOT) drug test.  
4 Plaintiff tested positive for marijuana. He alleges that he never  
5 used any type of controlled substance during the time he was  
6 employed by Defendant and that he does not smoke marijuana. Until  
7 the October, 2004 drug test, Plaintiff had had a flawless  
8 employment history and had passed more than 100 DOT drug tests.

9 When Plaintiff learned that his drug test had returned  
10 positive, he asked his dentist whether Vicodin prescribed following  
11 oral surgery could have caused the positive test. The dentist  
12 stated that it was possible and also informed Defendant's testing  
13 agency of this belief. Based on his dentist's belief, Plaintiff  
14 requested a repeat drug test. Defendant refused and instead  
15 terminated Plaintiff.

16 Following his termination, Plaintiff sought unemployment  
17 benefits. Defendant contested the claim. The California  
18 Unemployment Insurance Appeals Board held a hearing and concluded  
19 that Defendant had not established the reliability of its testing  
20 procedures and had not produced evidence to establish that Mitchell  
21 actually used drugs while employed as a commercial truck driver.

22 Plaintiff alleges that once in August, 2005 and five times  
23 since March, 2006 he was either terminated or rejected from  
24 employment. He asserts that these negative actions were based on  
25 false information reported by Defendant. In particular, Plaintiff  
26 asserts that Defendant stated that in April, 2004, Plaintiff was  
27 involved in an accident in Georgia and that he had a tested  
28

1 positive during a DOT drug test.

2 Based on these allegations, Plaintiff brings three claims  
3 against Defendant: violation of the Fair Credit Reporting Act  
4 (FCRA), 15 U.S.C. § 1681, intentional infliction of emotional  
5 distress and negligent infliction of emotional distress.

6 LEGAL STANDARD

7 Rule 12(c) of the Federal Rules of Civil Procedure provides,  
8 "After the pleadings are closed but within such time as not to  
9 delay the trial, any party may move for judgment on the pleadings."  
10 Judgment on the pleadings is proper when the moving party clearly  
11 establishes on the face of the pleadings that no material issue of  
12 fact remains to be resolved and that it is entitled to judgment as  
13 a matter of law. Hal Roach Studios, Inc. v. Richard Feiner & Co.,  
14 Inc., 896 F.2d 1542, 1550 (9th Cir. 1990).

15 DISCUSSION

16 I. Fair Credit Reporting Act

17 The FCRA creates a private right of action against credit  
18 reporting agencies for negligent or willful non-compliance with its  
19 duties. 15 U.S.C. §§ 1681n, 1681o. As Defendant argues,  
20 Plaintiff's FCRA claim fails because Defendant is not a consumer  
21 reporting agency. Under the FCRA, a consumer reporting agency is  
22 defined as,

23 any person which, for monetary fees, dues, or on a  
24 cooperative nonprofit basis, regularly engages in whole  
25 or in part in the practice of assembling or evaluating  
26 consumer credit information or other information on  
27 consumers for the purpose of furnishing consumer  
28 reports to third parties, and which uses any means or  
facility of interstate commerce for the purpose of  
preparing or furnishing consumer reports.

1 15 U.S.C. § 1681a(f). As Plaintiff alleges, Defendant is "a  
2 licensed interstate hauling/transportation carrier." Complaint  
3 ¶ 4. Although Plaintiff also alleges that Defendant is a  
4 "'consumer reporting agency' within the meaning of the Fair Credit  
5 Reporting Act," he does not allege any facts to support such a  
6 finding. Id.

7 Therefore, the Court grants Defendant's motion for judgment on  
8 the pleadings with respect to Plaintiff's FCRA claim.

9 II. Emotional Distress Claims

10 Defendant next argues that Plaintiff's negligent and  
11 intentional infliction of emotional distress claims are barred by  
12 the doctrine of workers' compensation exclusivity. Defendant does  
13 not cite any case in which a reference regarding a former employee  
14 was found to be an act arising out of the former employment.  
15 Therefore, the Court will not grant judgment on the pleadings with  
16 respect to Plaintiff's negligent and intentional infliction of  
17 emotional distress claims.

18 However, as stated above, the Court grants Defendant's motion  
19 for judgment on the pleadings with respect to Plaintiff's only  
20 federal claim. Under 28 U.S.C. § 1367(c)(3), a district court may  
21 decline to exercise supplemental jurisdiction over a claim if the  
22 court has dismissed all claims over which it has original  
23 jurisdiction. Brown v. Lucky Stores, 246 F.3d 1182, 1189 (9th Cir.  
24 2001). The decision to retain jurisdiction over state law claims  
25 is within the discretion of the district court, weighing factors  
26 such as economy, convenience, fairness, and comity. Brady v.  
27 Brown, 51 F.3d 810, 816 (9th Cir. 1995) (citing Imagineering, Inc.

1 v. Kiewit Pac. Co., 976 F.2d 1303, 1309 (9th Cir. 1992), cert.  
2 denied, 507 U.S. 1004 (1993)). Because this case is at an early  
3 stage, the Court declines to exercise supplemental jurisdiction  
4 over Plaintiff's remaining state law claims. See Imagineering, 976  
5 F.3d at 1309 (when all federal claims are dismissed before trial,  
6 the balance of factors points toward declining to exercise  
7 jurisdiction over remaining state law claims) (citations omitted).  
8 Therefore, the Court dismisses Plaintiff's negligent and  
9 intentional infliction of emotional distress claims without  
10 prejudice to refiling in state court.

11 CONCLUSION

12 For the foregoing reasons, the Court GRANTS in part  
13 Defendant's motion for judgment on the pleadings (Docket No. 24).  
14 Plaintiff's FCRA claim is dismissed with prejudice. His claims for  
15 negligent and intentional infliction of emotional distress claims  
16 are dismissed without prejudice to refiling in state court. If  
17 Plaintiff wishes to pursue his claims in state court, he must do so  
18 promptly.

19 Because this case will not go forward in this Court, a  
20 referral to the attorney-assisted settlement conference program  
21 will not be made. The clerk shall close the file. Each party shall  
22 bear its own costs.

23 IT IS SO ORDERED.

24 7/3/08

25 Dated: \_\_\_\_\_



26 CLAUDIA WILKEN  
27 United States District Judge  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MITCHELL et al,

Case Number: CV07-04388 CW

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

OAK HARBOR FREIGHT LINES INC et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 3, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Willie L. Mitchell  
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Dated: July 3, 2008

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk